

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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NATIONAL RAILROAD PASSENGER
CORPORATION,

Plaintiff,

v.

ARCH SPECIALTY INSURANCE COMPANY;
ASPEN SPECIALTY INSURANCE COMPANY;
COMMONWEALTH INSURANCE COMPANY;
FEDERAL INSURANCE COMPANY; LEXINGTON
INSURANCE COMPANY; LIBERTY MUTUAL FIRE
INSURANCE COMPANY; CERTAIN
UNDERWRITERS AT LLOYD'S OF LONDON and
CERTAIN LONDON MARKET COMPANIES
Subscribing to Policy Nos. 507/N11NA08240,
507/N11NA08241, 507/N11NA08242,
507/N11NA08244, 507/N11NA08244,
507/N11NA08245 and GEP 2944; MAIDEN
SPECIALTY INSURANCE COMPANY; MAXUM
INDEMNITY COMPANY; NAVIGATORS
INSURANCE COMPANY; PARTNER
REINSURANCE EUROPE plc; RSUI INDEMNITY
COMPANY; SCOR GLOBAL P&C SE; STEADFAST
INSURANCE COMPANY; TORUS SPECIALTY
INSURANCE COMPANY; and WESTPORT
INSURANCE CORPORATION,

Defendants.
-----X

No. 14 Civ. 7510 (JSR)

NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law, and all prior pleadings and proceedings in this matter, Defendants Arch Specialty Insurance Company, Aspen Specialty Insurance Company, Commonwealth Insurance Company, Federal Insurance Company, Lexington Insurance Company, Liberty Mutual Fire Insurance Company, Certain Underwriters at Lloyd's of London, and Certain London Market Companies Subscribing to Policy Nos. 507/N11NA08240, 507/N11NA08241, 507/N11NA08242, 507/N11NA08244, 507/N11NA08244,

507/N11NA08245 and GEP 2944, Maiden Specialty Insurance Company, Maxum Indemnity Company, Navigators Insurance Company, Partner Reinsurance Europe plc, RSUI Indemnity Company, Steadfast Insurance Company, Torus Specialty Company, and Westport Insurance Corporation, hereby move this Court, before the Honorable Jed. S. Rakoff, United States Courthouse for the Southern District of New York, Room 14-B, 500 Pearl Street, New York, New York 10007, for an order dismissing the Complaint of Plaintiff National Railroad Passenger Corporation insofar as it seeks consequential damages and attorneys' fees and costs, pursuant to Fed. R. Civ. P. 12(b)(6) – or, in the alternative, for a more definite statement, pursuant to Fed. R. Civ. P. 12(e) – on the ground that the Complaint does not contain sufficient factual allegations stating a plausible claim for such relief under New York law, including factual allegations showing that such damages were foreseeable and probable at the time of contracting, quantifiable, and proximately caused by the breach, and allegations showing bad faith on the part of the Defendants in denying Plaintiff's claims for insurance coverage.

PLEASE TAKE FURTHER NOTICE that, during a joint conference call on December 4, 2014, the Court set the following briefing schedule for the present motion:

Moving Papers:	December 5, 2014
Answering Papers:	December 19, 2014
Reply Papers:	December 29, 2014

No oral argument has been set by the Court.

Dated: New York, New York
December 5, 2014

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Attorneys for Defendants Partner Reinsurance Europe plc, Torus Specialty Insurance Company, Westport Insurance Corporation, and Certain Underwriters at Lloyd's of London and Certain London Market Insurance Companies subscribing to Policy Nos. GEP 2944, 507/N11NA08242, 507/N11NA08244, and 507/N11NA08244.

All other signatories listed, and on whose behalf the filing is submitted, consent to its filing.

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Attorneys for Defendants Arch Specialty Insurance Company, Aspen Specialty Insurance Company, Federal Insurance Company, Certain Underwriters at Lloyd's of London and Certain London Market Insurance Companies subscribing to Policy Nos.

507/N11NA08240 and 507/N11NA08241, Maxum Indemnity Company, Navigators Insurance Company, and RSUI Indemnity Company.

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